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Supreme Court, U.S.
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No.

In the
Supreme Court of the United States

ADAM N. STILLO and
FLORENCE F. STILLO,

Petitioners,

v.

STATE RETIREMENT SYSTEMS,
JUDGES' RETIREMENT SYSTEM OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

STANLEY H. JAKALA
Counsel of Record
3219 South Maple Avenue
Berwyn, Illinois 60402-2809
(708) 788-5733

Attorney for Petitioners

Midwest Law Printing Company/Photex — Chicago — (312) 321-0220

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QUESTIONS PRESENTED

1. Did the petitioner's monthly pension of $5,468.60 net and other attendant benefits, property right, entitle the petitioner to a pre-suspension hearing before those benefits could be suspended prior to the scheduling of a termination hearing of those benefits?

2. Should the pension benefits and other attendant benefits, property right, have been suspended or alternatively terminated prior to the exhaustion of the petitioner's remedies relative to a criminal conviction for which he was sentenced on July 11, 1994?

LIST OF ALL PARTIES

The caption of this petition lists as respondents all of the appellees in the proceeding in the Illinois Appellate Court, First District, Cook County, Illinois, and the Supreme Court of Illinois.

The petitioners herein are Adam N. Stillo and Florence F. Stillo, his wife.

Prior to being convicted by a federal grand jury sitting in the Northern District of Illinois, Seventh Circuit, for charges of racketeering and extortion conspiracy for which the petitioner, Adam N. Stillo, had been sentenced on July 11, 1994, Judge Stillo was receiving a monthly pension of $5,468.60 net and other attendant benefits, which included medical coverage for his wife, Florence F. Stillo.

Also, prior to being indicted for charges of racketeering and extortion conspiracy for which the petitioner, Adam N. Stillo, was sentenced on July 11, 1994, Judge Stillo had retired from the bench as a judge on August 11, 1988, six years before being indicted.

The petitioner is not a corporation; no disclosure of parent companies and subsidiaries pursuant to Rule 29.6 is required.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully requests this Court to issue a Writ of Certiorari to the Appellate Court of Illinois, First District, to review that Court's decision and opinion entered on May 21, 1999 (App. 1), with a subsequent denial of Petition for Leave to Appeal by the Illinois Supreme Court on December 1, 1999 (App. 21).

OPINIONS BELOW

On November 24, 1997, the Circuit Court of Cook County, Illinois, denied the plaintiffs' complaint for administrative review (App. 19).

On May 21, 1999, the Appellate Court of Illinois, First District, Sixth Division, affirmed the decision of the Circuit Court of Cook County, Illinois (App. 1).

On July 19, 1999, the Appellate Court of Illinois, First District, Sixth Division, denied the plaintiffs-appellants' petition for rehearing (App. 20).

On December 1, 1999, the Supreme Court of Illinois denied the petitioners' Petition for Leave to Appeal (App. 21).

STATEMENT OF JURISDICTION

1. The published opinion of the Illinois Appellate Court, First District, Sixth Division (App. 1-18), was entered on May 21, 1999. That opinion affirmed the circuit court's ruling (App. 19), which had affirmed the respondent's decision that petitioner's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution were not violated, even though petitioner was not afforded a pre-suspension hearing concerning his monthly pension of $5,468.60 net and other attendant benefits prior to suspension of those benefits, and those benefits were terminated after a termination hearing, prior to exhaustion of petitioner's remedies, relative to his criminal sentence of July 11, 1994, concerning his conviction for charges of racketeering and extortion conspiracy by the federal grand jury.

2. The Appellate Court denied a petition for rehearing on July 19, 1999 (App. 20).

3. The Illinois Supreme Court denied a petition for leave to appeal on December 1, 1999 (App. 21).

4. The Petition for Writ of Certiorari was filed less than 90 days from the denial of the Petition for Leave to Appeal by the Supreme Court of Illinois, said denial occurring on December 1, 1999.

5. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Amendment V to the Constitution of the United States

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV to the Constitution of the United States

§1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

40 ILCS 5/18-163

§ 18-163. Felony conviction. None of the benefits herein provided shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his or her service as a judge.

Illinois Supreme Court Rule 761.
Conviction of Crime

(d) Hearing. Where an attorney has been convicted of a crime involving fraud or moral turpitude, a hearing shall be conducted before the Hearing Board to determine whether the crime warrants discipline, and, if so, the extent thereof.

(1) If the attorney has not appealed from the conviction, the Administrator shall file a complaint with the Hearing Board alleging the fact of the conviction.

(2) If the attorney has appealed from the conviction, the hearing shall be delayed until completion of the appellate process unless the attorney requests otherwise. If after the completion of the appellate process the conviction has not been reversed, the attorney shall notify the Administrator within 30 days of the mandate being filed in the trial court that the conviction was affirmed. Upon becoming aware that the conviction has been affirmed, the Administrator shall file a complaint with the Hearing board as described in (1) above.

STATEMENT OF THE CASE

On September 30, 1994, an administrative decision was received by the petitioner, which decision bore the date of September 28, 1994. (C2)

The petitioner desires judicial review of the final decision of the administrative agency's terminating Adam N. Stillo's monthly pension of $5,468.60 with the attendant benefits of life and medical insurance, and terminating Florence F. Stillo's vested interest as a primary beneficiary in Adam N. Stillo's pension and existing medical coverage. (C2)

Judicial review is sought for the reason that the decision is both contrary to law and contrary to the actual facts of the case, not limited to but including the following reasons: (C2)

Adam N. Stillo's monthly pension of $5,468.60, with the attendant benefits of life and medical insurance, and Florence F. Stillo's vested interest as a primary beneficiary in Adam N. Stillo's pension and existing medical coverage, were suspended without a hearing on August 1, 1994. (C3)

Suspending Adam N. Stillo's monthly pension of $5,468.60 net, with the accompanying benefits relating to Adam N. Stillo and Florence F. Stillo, without a hearing, violated the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution, which would have required notice and opportunity for a hearing, pursuant to *Goss v. Lopez*, 419 U.S. 565 (1975). (C3)

Although the respondent administrative agency provided the petitioner with a hearing on August 26, 1994, the hearing was only provided after the petitioner had filed a complaint for declaratory judgment with an agreed order providing for such a hearing, since the respondent had determined to terminate the benefit without a hearing on January 19, 1994. (C3)

The respondent relies upon *People ex rel. Grogan v. Lisinski*, 68 Ill. Dec. 854, 113 Ill.App.3d 276 (1st Dist. 5th Div. 1983), for the contention that it has the legal authority to terminate the petitioner's pension and accompanying benefits because the imposition of the sentence constituted a final judgment. (C4)

Respondent's reliance upon the *Grogan* decision is misplaced, since *People ex rel. Grogan v. Lisinski* concerned the removal of Lisinski from political office, and did not concern the extinguishment of a property right, as recognized in *Moore v. Board of Trustees*, 157 Ill.App.3d 158 (1987), and *Wendl v. Moline Police Pension Board*, 96 Ill.App.3d 482 (3d Dist. 1981). (C4)

The petitioner's position before the administrative agency was that Adam N. Stillo's appeal of the finding of guilty and imposition of sentence in the criminal proceedings stayed termination of that property right, pursuant to a legal principle that has been recognized by the Supreme Court of Illinois in its rule 761(D), governing suspensions and disbarments of attorneys. This rule provides that a hearing for disbarment is stayed until the appeal process has been completed regarding the conviction and sentencing of one in a criminal proceeding. (C4)

The principle enunciated in Supreme Court Rule 761, paragraph D, that an appeal stays a disbarment proceeding, incorporates due process as reflected in the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution, and to suspend or terminate Adam N. Stillo's pension, with its attendant benefits, with such suspension or termination impacting upon Florence F. Stillo's attendant benefits, violates the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution. (C4-5)

On August 29, 1988, Judges' Retirement System of Illinois correspondence indicated that Adam N. Stillo's cost of an annuity was $44,182.65. (C5)

The aforementioned annuity cost does not include the cost of survivor benefits of Florence F. Stillo, which information is found in respondent's record. (C5)

From 1988 through 1994, the petitioner, Adam N. Stillo, was paid $21,279.93 from the annuity cost of $44,182.65. (C5)

Subtracting $21,279.93 from $44,182.65 results in a net balance of $22,902.72 available for distribution to Adam N. Stillo. (C5)

Page one of the administrative agency's opinion indicates that Adam N. Stillo contributed $104,574.95 to the retirement system and has been repaid $21,279.93, with the difference being $83,938.22, which is the amount that would be due and owing Adam N. Stillo; Adam N. Stillo does not owe the Judges' Retirement System of Illinois the sum of $4,483.43. (C5)

REASONS FOR GRANTING THE WRIT

I.

THE PETITIONER WAS ENTITLED TO A PRE-SUSPENSION HEARING BEFORE THE PETITIONER'S PENSION BENEFITS WERE SUSPENDED.

In 1969, in *Sniadach v. Family Finance Corporation of Bay View*, 23 L.Ed.2d 349, 395 U.S. 337, 89 S.Ct. 1820 (1969), the United States Supreme Court was concerned with a garnishment action against defendant and her employer as garnishee. Defendant moved that garnishment proceedings be dismissed for failure to satisfy due process requirements of the Fourteenth Amendment. The county court upheld the state garnishment statute. On appeal, the Circuit Court, Milwaukee County, and Supreme Court of Wisconsin, 37 Wis.2d 163, 154 N.W.2d 259, affirmed. Defendant petitioned for writ of certiorari. The United States Supreme Court, Mr. Justice Douglas, held that absent notice and prior hearing Wisconsin prejudgment garnishment procedure in which summons is issued at request of creditor's lawyer and lawyer by serving garnishee sets in motion machinery whereby wages are frozen in interim before trial of main suit without any opportunity on part of wage earner to be heard or to tender any defense he might have, whether fraud or otherwise, violated fundamental principles of due process. Reversed.

In this case, the sole question is whether there has been a taking of property without a procedural due process that is required by the Fourteenth Amendment, the question of what constitutes "the right to be heard." (*Schroeder v. New York*, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255 (1962)). Although the petitioner acknowl-

edges the fact that notice of termination hearing and termination hearing was afforded to him, nonetheless, the question before this Supreme Court of the United States is whether the interim suspending of a retirement monthly pension of $5,468.80 net, a property right, without a chance to be heard, violates the procedural due process clause of the Fourteenth Amendment.

Granted that the United States Supreme Court has analyzed due process, in some instances, as flexible due process, which the Illinois appellate court opinion adopted in rejecting the petitioner's claim that he was entitled to procedural due process prior to the suspending of his monthly pension and other attendant benefits (App. 9), the petitioner strongly suggests that flexible due process should not apply in this case for the reasons hereinafter stated.

For emphasis, before analyzing the appropriate Illinois Appellate and Supreme Court decisions, and the decisions of the United States Supreme Court, relative to the issue of whether the petitioner should have been afforded a pre-suspension hearing, it is the position of the petitioner, after review of the law, that it is obvious that there has been a blatant violation of due process rights under the Fifth and Fourteenth Amendments, in this matter, by suspending the petitioner's property right, a retirement monthly pension and other attendant benefits, without providing him with a procedural due process pre-suspension hearing.

In the Illinois Appellate Court opinion (App. 9-10), the Appellate Court cites numerous cases to support its position that flexible due process applies to the petitioner, by relying chiefly upon *Goldberg v. Kelly*, 397 U.S. 254, 25

L.Ed.2d 287, 90 S.Ct. 1011 (1970), and *Mathews v. Eldridge*, 424 U.S. 319, at 335, 47 L.Ed.2d at 33, 96 S.Ct. at 903 (1976).

Relative to *Goldberg v. Kelly*, that United States Supreme Court decision supports the petitioner's contention that he was entitled to a pre-suspension hearing as it concerned an extinguishing of a property right, which entitled the petitioner to a pre-suspension hearing.

As was noted in the *Goldberg v. Kelly* United States Supreme Court decision, welfare benefits are statutory benefits that require hearings.

It should be emphasized that the distinction between the petitioner herein and *Goldberg v. Kelly* is that the petitioner contributed his own funds to the Judges' Retirement System, which, in turn, utilized those funds and other governmental funds to pay the petitioner's monthly retirement pension of $5,468.60 net and other attendant benefits.

On the other hand, in *Goldberg v. Kelly*, the United States Supreme Court was concerned not with pension contributions paid by a pensioner's moneys, but payment of welfare benefits from taxpayer moneys, which the *Goldberg v. Kelly* United States Supreme Court determined as benefits constituting a property right, entitling the recipient to a hearing before those welfare benefits can be extinguished.

Consequently, if welfare benefits cannot be extinguished without a hearing because they are property rights, it is inconceivable to maintain that pension benefits, consisting of contributions by a recipient, in this instance of $104,574.95, can be extinguished without a pre-suspension hearing of those benefits.

At the same time, *Mathews v. Eldridge*, 424 U.S. 319 (1976), as relied upon by the Illinois Appellate Court, is clearly distinguishable from the facts of the petitioner.

At the outset, it should be noted that Eldridge did not exhaust his internal review procedures provided by the secretary of the Social Security Administration (SSA). See 20 CFR 404.910, 404.916, 404.940 (1975).

Because Eldridge had not exhausted his internal review procedures, the Secretary of the Social Security Administration moved to dismiss on the grounds that Eldridge's benefits had been terminated in accordance with valid administrative regulations and review procedures, and that Eldridge himself failed to exhaust the remedies of review within the SSA.

In these proceedings, the petitioner was not afforded the initial opportunity to have a pre-suspension hearing in order to invoke the application of the exhaustion of remedies by administrative review procedures to contest the decision to suspend his pension benefits without a hearing.

Also, *Mathews v. Eldridge* should not govern the denial of a pre-suspension hearing of pension benefits in this matter, pursuant to the analysis of *Gilbert v. Homar*, 116 S.Ct. 1807 (1997).

In *Gilbert v. Homar*, the Supreme Court of the United States has ruled that there can be a suspension of plaintiffs' property rights, such as payment of wages, without a notice and hearing requirement. At 126-127 of the *Gilbert v. Homar* Supreme Court decision, 138 L.Ed.2d 120 (1997), the United States Supreme Court addressed

the *Cleveland Board of Education v. Loudermill*, 470 U.S. 432, 84 L.Ed.2d 494, 105 S.Ct. 1487 (1985), decision.

In the *Loudermill* Supreme Court decision, the United States Supreme Court required that a tenured public employee, one who could be dismissed only for cause, was entitled to a limited hearing prior to his termination, to be followed by a more comprehensive termination hearing process.

With reference to the *Loudermill* position, it was noted that if government interests required immediate action because of a perception of a significant hazard in maintaining the employee on the job, then the employee could be suspended with pay.

But, at pages 127-128 of the *Gilbert v. Homar* United States Supreme Court decision, the United States Supreme Court has also ruled that, if the governmental employer perceives a hazard which requires immediate action, then that immediate action can generate a suspension without pay, since there is a flexibility of due process in that respect.

Applying that flexibility of due process, from the standpoint of *Mathews v. Eldridge*, 424 U.S. 319 (1976), as analyzed by the Supreme Court of the United States at 128 of the *Gilbert* decision, to the petitioner, the petitioner not only has a substantial interest that would require a hearing, but the petitioner was not a hazard, which would have required suspending his pension benefits without pay.

That determination of whether the petitioner has more than a minimal, but in fact a substantial, interest in receiving pension benefits after being convicted of taking

bribes as a judge should have been addressed in a pre-suspension hearing, which would have required evidence relating to the other two factors as stated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), as cited by *Gilbert v. Homar*, 138 L.Ed.2d 120 (1997), at 128; namely, the risk of erroneous deprivation and the compelling government interest at stake.

Because the petitioner was convicted and sentenced, that conviction and sentencing does not translate into a risk of erroneous deprivation being minuscule until the petitioner has exhausted his appellate process to reverse such a criminal conviction.

At the same time, although in *Gilbert v. Homar*, a United States Supreme Court decision, 116 S.Ct. 1807 (1997), there is a reference to compelling governmental interest that could be the basis that a judiciary must be free from corruption, the *Gilbert v. Homar* United States Supreme Court decision can be factually distinguished from the proceedings in this matter when, at page 127 of the *Gilbert v. Homar* Supreme Court decision, the court concerned itself with a governmental employer perception of a hazard in leaving an employee on the job.

Here, the petitioner, Adam N. Stillo was no longer a judge, and was not on the job. In effect, Adam N. Stillo was a hazard to no one.

For purposes of emphasis, the courts consistently have held that some form of hearing is required before an individual is finally deprived of a property right interest as case law hereinafter holds. *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974). See, e.g., *Phillips v. Commissioner*, 283 U.S. 589, 596-597 (1931). See also *Dent v.*

West Virginia, 129 U.S. 114, 124-125 (1889). The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). See *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). Requirements of due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount.

Relative to the above analysis of United States Supreme Court cases, the petitioner refers this United States Supreme Court to Illinois decisions to support his contention that he was entitled to a pre-suspension hearing, before the suspending of his monthly pension benefit and other related benefits.

In 1981, in *Wendl v. Moline Police Pension Board*, 96 Ill.App.3d 482 (3d Dist. 1981), at pages 486-487, the court held that police officers receiving disability pensions retained a property right in such pensions, which right could not be terminated without meaningful notice and a meaningful opportunity to be heard.

That the property right cannot be terminated without notice and a hearing process has been recognized in federal court decisions; specifically, *Begg v. Moffitt*, 555 F.Supp. 1344 (1983), at 1348, espoused the legal theory

that a legitimate claim of entitlement cannot be lost except for cause, which requires a hearing process.

Likewise, in *Moore v. Board of Trustees,* 157 Ill.App.3d 158 (1st Dist. 1st Div. 1987), the Appellate Court ruled that Thomas Moore, a Metropolitan Sanitary District employee who was receiving monthly pension annuity benefits based upon completion of ten years of service with the Metropolitan Sanitary District, could not have his pension benefit terminated without a hearing, upon a finding of guilt on August 3, 1985, of a commission of a felony in connection with his employment.

Specifically, at pages 165-166, the Appellate Court determined that Mr. Moore's pension benefit could not be discontinued without notice and an opportunity to be heard.

Because of the analysis in *Moore v. Board of Trustees,* 157 Ill.App.3d 158 (1st Dist. 1st Div. 1987), a judge's pension with its attendant benefits cannot be suspended without notice, without an opportunity to be heard, and without a hearing, requiring the Retirement System to produce evidence for the suspension of such a pension with its attendant benefits.

Concerning the legal concepts as expressed in *Wendl v. Moline Police Pension Board*, 51 Ill. Dec. 949, 96 Ill.App. 3d 482, 421 N.E.2d 584 (3d Dist. 1981), *Begg v. Moffitt,* 555 F.Supp. 1344 (1983), and *Moore v. Board of Trustees*, 109 Ill. Dec. 466, 157 Ill.App.3d 158, 510 N.E.2d 87 (1st Dist. 1st Div. 1987), a property right, such as a pension property right, cannot be terminated without notice and a hearing.

Admittedly, none of the above cited Illinois decisions concerned notice of due process and hearings for suspension of pension property rights, there are Illinois decisions that concern such due process notice and hearing for suspensions of not only property rights, but privileges.

In *People v. Gerke*, 123 Ill.2d 85 (1988), at page 91, the Illinois Supreme Court observed that a summary suspension did not become effective until 46 days following the date of notification of a suspension.

Relating to the notification of the commencement of the suspension, the offender affected by the suspension has 30 days, from the receipt of notification of suspension, commencing on the 46th day, to request a hearing.

Likewise, in *People v. Esposito,* 121 Ill.2d 491 (1988), at 496-497, the summary suspension of driving privileges concerned the same statutory requirements as found in *People v. Gerke*, as analyzed by the plaintiffs-petitioners herein; namely, summary suspension being delayed until a certain date following a notice of a summary suspension, which notice provided for a request for a hearing within a certain period prior to the commencement of the summary suspension.

As was noted in the *Esposito* Supreme Court opinion, at 495, the provisions of summary suspension concern "driving privileges and the issuance of judicial driving permits." (Emphasis supplied.)

In contrast, in *Morgan v. Illinois Racing Board*, 155 Ill.App.3d 611 (3d Dist. 1987), in examining the Illinois Racing Act of 1975 (Ill. Rev. Stat. 1985, ch. 8, par. 37-1 *et seq.*), the Illinois Supreme Court determined that the

Illinois Racing Act had created a property right relating to possessing an Illinois horse racing license, requiring the board to hold a hearing within seven days after a request is made for such a hearing, 615 of the *Morgan* Illinois Supreme Court opinion.

As analyzed in *People v. Gerke* and *People v. Esposito*, in those decisions the parties involved had an opportunity to request a hearing after receiving notice that a suspension would not occur until some time later.

Consistent with the Illinois Supreme Court analysis as found in *People v. Gerke* and *People v. Esposito*, which related to driving privileges, not property rights, that approach of those two Illinois Supreme Court decisions was adopted by the *Morgan v. Illinois Racing Board* Supreme Court, which held that the suspension of an occupational license, a property right, required notice of such a suspension, with the suspended licensee being provided with the right to demand a hearing within five days, and with the board holding such a hearing within seven days.

Certainly, the concepts of due process espoused by statutory law in *People v. Gerke*, *People v. Esposito*, and *Morgan v. Illinois Racing Board*, are embodied in the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution, and those due process rights can be extended to suspension hearings as they are to termination hearings.

Because of the petitioner's analysis in this petition for writ of certiorari, contrary to the analysis in the Appellate Court opinion, for purposes of emphasis, the notice for the scheduled termination of the benefits hearing did

not refer to the suspension of those pension benefits, which suspension occurred prior to the issuance of the notice for the termination hearing.

Although the Appellate Court has determined that the pension benefits were suspended only for the month of August, 1994, pending the outcome of the August 26, 1994, termination hearing of the pension benefits, with the result that the loss of those benefits was considered minimal, nevertheless, it is the contention of the petitioner that the suspension of the benefits for one month was substantial, not minimal, adversely impacting on the financial needs of the petitioner to support himself and his wife for that given month.

Without question, the private stake of the petitioner herein involved property that was derived from the petitioner's contribution to the judges' retirement pension fund, which contributions were based upon compensation for services rendered to the government by the petitioner.

As a consequence, the petitioner's property interest should be considered similarly to wages, as "specialized type of property presenting distinct problems in our economic system," citing *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 340, 89 S.Ct. 1820, 1822, 23 L.Ed.2d 349 (1969), which required a hearing prior to extinguishing the receipt of wages.

Because the petitioner's private interest at stake was a substantial one, as it adversely impacted on his financial needs to support himself and his wife during the month that he had lost his pension benefits, the petitioner was entitled to a pre-suspension hearing.

Further, at App. 10, the Appellate Court expressed the view that there was no risk of erroneous deprivation of petitioner's benefits, as the procedure followed by the Judges' Retirement System did not require additional procedural safeguards, since the petitioner received a termination hearing notice on July 26, 1994, with the result that there was no risk of erroneous deprivation of the petitioner's benefits.

The petitioner disagrees with the aforementioned analysis concerning the Appellate Court's view of no risk of erroneous deprivation, because of the adverse impact on his financial needs to support himself and his wife during the month that they had lost his pension benefits.

In addition, contrary to the Illinois Appellate Court opinion, relative to the overriding governmental and public interest from the standpoint of a financial burden, there was no financial burden to provide a pre-suspension hearing, and there was no financial burden to pay the petitioner's pension, as he contributed his own funds to the Judges' Retirement System for services that he had rendered as a judge.

II.

THE PETITIONER'S PENSION BENEFITS COULD NOT BE TERMINATED PRIOR TO THE EXHAUSTION OF PETITIONER ADAM N. STILLO'S APPELLATE REMEDIES RELATING TO HIS CRIMINAL CONVICTION.

In the Appellate Court's opinion (App. 17), the Court asserts "We find that the language of section 18-163 does not support expanding the coverage of the reasoning used in Rule 761."

Further, on page 17 of its opinion, the Appellate Court holds: "If we were to apply the procedures set forth in Rule 761, we would nullify the plain language of section 18-163 and call into question the supreme court's well-reasoned decision in *Keenan*. Such drastic action is not warranted."

But in reviewing *People ex rel. Keenan v. McGuane*, 13 Ill.2d 520 (1958), the Illinois Supreme Court did not discuss as fully as has the Appellate Court herein the concept of including the exhaustion of remedies before the termination of pension benefits.

On page 537 of the *Keenan* Supreme Court opinion, the Supreme Court merely stated: "We find no merit in petitioner's contention that pendency of his appeal stays the finality of his conviction and thereby holds in abeyance a vacancy in the office of Cook County assessor."

In this instance, the Appellate Court did address the petitioner's contention that Rule 761 should be embodied in the concept of staying a final judgment, which Rule 761 concept was not raised and therefore could not be considered by the *Keenan* Supreme Court.

However, contrary to the appellate court's view of *Levine v. Kling*, 123 F.3d 580 (7th Cir. 1990), in footnote 3, on page 17 of the Illinois Appellate Court opinion, that the *Levine* opinion merely stands for the conclusion that "had Stillo had his conviction reversed by the court of appeals, he could have had his benefits restored," from the viewpoint of the petitioner, the *Levine* court considered the exhaustion of remedies as enabling the filing of a new malpractice suit by staying the statute of limitations until exhaustion of appellate remedies had occurred.

Although the petitioner acknowledges that the Illinois appellate court's opinion analyzing the *Levine v. Kling* Seventh Circuit decision stated that the exhaustion of remedies in staying the application of the statute of limitations required that the malpractice filing would have to be based upon a reversal of a criminal conviction, nevertheless, the significance of the *Levine* appellate court decision of the Seventh Circuit is that the exhaustion of remedies protects the criminal defendant from the finality of a criminal judgment that may be insupportable either by evidence or fairness of trial.

Based upon the above observation, it is the contention of the petitioner that the Illinois Supreme Court Rule 761(d)(2) stays the revocation of an attorney's license based upon a criminal conviction until there is a determination if the finality of a criminal conviction is supported by evidence and fairness.

Under Rule 761(d)(2), Adam N. Stillo could not have lost his license to practice law until he had exhausted his Appellate remedies; upon exhaustion of those Appellate remedies, then the ARDC could institute disciplinary proceedings for removal of Adam N. Stillo from the roll of attorneys of Illinois, which removal from the roll of attorneys of Illinois had to be sanctioned by the Supreme Court of Illinois.

It should be noted with much significance that Adam N. Stillo retired as judge on August 11, 1988, and was not removed as judge because of his federal conviction.

After retiring as judge, petitioner's law license could not be permanently extinguished, disbarment, until he

had exhausted his remedies of appeal, pursuant to Illinois Supreme Court Rule 761(d)(2).

Nonetheless, in its opinion, the Appellate Court, at App. 17, asserts that it would not extend the Illinois Supreme Court Rule 761(d)(2) concept, exhaustion of remedies before disbarment of an attorney, to staying the suspending or terminating of pension benefits until such an exhaustion of remedies had occurred, by stating "such drastic action is not warranted."

But it is the contention of the petitioner that such drastic action is warranted on the basis of the Fifth and Fourteenth Amendments to the United States Constitution, which provide that no person shall be deprived of property without due process, and that due process does include the exhaustion of remedies principle as adopted by Illinois Supreme Court Rule 761(d)(2), particularly when the deprivation of property concerns a pension property right consisting of money contributions by the recipient.

Certainly, revoking an attorney's license is an important governmental interest, but Illinois Supreme Court Rule 761(d)(2) recognizes that that governmental interest is less paramount than the doctrine of the exhaustion of remedies, when Illinois Supreme Court Rule 761(d)(2) provides for an exhaustion of remedies prior to the revocation of an attorney's license, which, in effect, recognizes that there is an exhaustion of remedies concept embodied in the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution.

Therefore, in these proceedings, the petitioner should not have had his pension terminated without the application of the exhaustion of remedies principle, as that principle is so paramount that it supersedes any governmental interest that would override the application of the exhaustion of remedies concept.

CONCLUSION

For the above-stated reasons, this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

STANLEY H. JAKALA*
Counsel of Record
3219 South Maple Avenue
Berwyn, Illinois 60402-2809
(708) 788-5733

Attorney for Petitioners

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* Author wishes to acknowledge the excellent legal assistance of Connie L. Pfaff, legal assistant of the office of Stanley H. Jakala, in the preparation of this Petition for Writ of Certiorari.

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SIXTH DIVISION
May 21, 1999

IN THE
ILLINOIS APPELLATE COURT
FIRST JUDICIAL DISTRICT

No. 1-97-4630

ADAM N. STILLO and FLORENCE F. STILLO,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	
STATE RETIREMENT SYSTEMS, JUDGES' RETIREMENT SYSTEM OF ILLINOIS,	)	Honorable John K. Madden, Judge Presiding.
Defendant-Appellee.	)	

JUSTICE BUCKLEY delivered the opinion of the court:

Plaintiffs, Adam N. Stillo (Stillo) and his wife, Florence F. Stillo, appeal a decision by the Board of Trustees of the Judges' Retirement System of Illinois (the Board) that terminated all of Stillo's pension benefits on the basis of Stillo's conviction and subsequent sentencing on two felony charges arising out of acts committed during his employment as a circuit court judge. Mrs. Stillo received health insurance benefits because of Stillo's membership in the Judges' Retirement Systems of Illinois (the System) and was the primary beneficiary of his pension benefits. The System also terminated her benefits. The

circuit court of Cook County denied plaintiffs' petition for administrative review, and this timely appeal followed.

On appeal, plaintiffs first contend that they were entitled to a presuspension hearing before their pension benefits were suspended and, second, that their pension benefits should not have been terminated prior to the exhaustion of Stillo's appeal of his criminal conviction. The System's claim for repayment of $4,483.42 paid to Stillo for the period July 11, 1994, to July 31, 1994, has not been raised on appeal or on a cross-appeal. For the reasons set forth below, we affirm the judgment of the circuit court.

BACKGROUND

In 1964, Stillo was appointed a magistrate for the circuit court of Cook County and became a participant in the System. At the time of his retirement on August 1, 1988, Stillo was serving as a circuit judge in the criminal division of the circuit court of Cook County. His monthly pension benefit at the time of retirement was in excess of $5,000.

In 1991, a federal grand jury indicted Stillo on charges of racketeering and extortion conspiracy. The charges arose out of bribery and extortion Stillo allegedly engaged in from 1976 to 1987. On July 29, 1993, at the conclusion of a jury trial in the United States District Court for the Northern District of Illinois, Stillo was found guilty on both counts of the indictment. Then, on July 11, 1994, the district court entered judgment on the convictions and sentenced Stillo to four years in prison. See *United States v. Stillo*, 57 F.3d 553, 556 (7th Cir. 1995).

Stillo appealed to the United States Court of Appeals for the Seventh Circuit, which affirmed the conviction on June 9, 1995. *Stillo*, 57 F.3d 553. The United States Supreme Court subsequently denied Stillo's petition for writ of *certiorari*. *Stillo v. United States*, 516 U.S. 945, 133 L.Ed.2d 306, 116 S.Ct. 383 (1995).

In a letter to Stillo dated January 19, 1994, Rudy J. Kink, Jr., manager of the System, informed Stillo that, in accordance with Illinois law (40 ILCS 5/18-163 (West 1994)), all benefit payments made to a member or annuitant must cease upon entry of judgment on a conviction and sentencing for a felony when the offense arose out of acts committed during the performance of official duties as a judge. Plaintiffs responded to Kink's letter on July 20, 1994, by filing a complaint for declaratory judgment and injunctive relief, and requesting the court to enjoin any termination of benefits until such time as a "full due process hearing" could be held. On July 26, 1994, Michael L. Mory, executive secretary of the System, notified Stillo that a hearing before the Board had been scheduled for August 26, 1994. The System paid Stillo his benefits through July of 1994 but suspended benefit payments for August 1994. Due to the scheduling of the Board's hearing, the circuit court dismissed Stillo's complaint for declaratory and injunctive relief.

Following the August 26 hearing, the Board entered a decision and order terminating all of plaintiffs' benefits as of July 11, 1994 (the date of sentencing in the district court), and directed the System to take the necessary steps to recover an overpayment of benefits of $4,483.42 for the period of July 11, 1994, through July 31, 1994. The Board's decision was based on section 18-163 of the

Illinois Pension Code (the Pension Code), which provides in relevant part: "None of the benefits herein provided shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his or her service as a judge ***." 40 ILCS 5/18-163 (West 1994). The decision was served on the plaintiffs on September 28, 1994.

The Board found that "conviction of either a state or federal felony, so long as that felony arose out of or in connection with one's employment," is sufficient to cause a forfeiture of pension benefits under the Pension Code. The Board also determined that while it is true that termination of benefits under section 18-163 of the Pension Code should not occur without a prior hearing, a hearing was provided in the instant case on August 26, 1994. Finally, the Board concluded that the System properly terminated plaintiffs' benefits, even though Stillo's appeal from the criminal conviction and sentence was still pending, because both Illinois and federal law state that pronouncement of a sentence constitutes a final judgment in a criminal proceeding. See *People v. Allen*, 71 Ill.2d 378, 381 (1978); 18 U.S.C. § 3582(b) (1994).

On October 28, 1994, plaintiffs filed a complaint in the circuit court of Cook County seeking administrative review of the Board's decision. Plaintiffs' complaint alleged that the Board's decision was contrary to both the applicable law and the facts of the case for the following reasons: (1) plaintiffs were entitled to notice and an opportunity for a hearing; (2) the System extinguished plaintiffs' property rights in pension benefits; (3) commencement of an appeal from Stillo's criminal conviction stayed termination of the pension benefits; (4) termina-

tion of plaintiffs' rights was a violation of due process; and (5) plaintiffs are owed $83,938.22 in previous contributions to the System. The circuit court of Cook County denied this petition for administrative review on November 24, 1997. The instant appeal raises a question of first impression and asks this court to determine whether section 18-163 of the Pension Code requires the Board to hold a hearing before benefits are suspended and, also, whether the System may terminate a participant's benefits before the participant exhausts all appeals from a criminal conviction.

ANALYSIS

I. STANDARD OF REVIEW

Section 18-164 of the Pension Code provides that judicial review of final decisions of the Board of the retirement system is governed by the provisions of the Administrative Review Law (Review Law) (735 ILCS 5/3-110 (West 1994)). 40 ILCS 5/18-164 (West 1994). Under the Review Law, findings and conclusions of fact shall be held by the reviewing court to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 1994). Factual findings and conclusions will not be disturbed on review unless they are against the manifest weight of the evidence. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill.2d 191, 205 (1998).

Conclusions of law by an agency are not entitled to the same deference on review as is accorded to the agency's factual findings and conclusions. Review of an administrative agency's legal conclusions is *de novo*. *Branson v. Department of Revenue*, 168 Ill.2d 247, 254 (1995). Thus,

while conclusions of law are not entitled to the same deference on review as is accorded to an agency's factual findings and conclusions, substantial weight and deference are given to an interpretation of a statute by an agency that is charged with administering the statute because an agency makes informed judgments based on its experience and expertise. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill.2d 76, 88 (1992).

Plaintiffs do not question the merits of the System's decision to terminate benefits under section 18-163 of the Pension Code. Rather, their arguments focus on the Board's conclusion that the System did not violate plaintiffs' due process rights by either suspending benefits before a hearing was held or by terminating benefits prior to resolution of Stillo's appeal from his criminal conviction. We find that the Board's decision was based on legal conclusions and will be reviewed *de novo*.

II. PROCEDURAL DUE PROCESS

Plaintiffs first contend that the pension and its attendant benefits were improperly suspended in violation of federal and state due process rights. The System, on the other hand, argues that there was no due process violation under the terms of section 18-163 of the Pension Code (40 ILCS 5/18-163 (West 1994)), because notice was provided to plaintiffs that benefits would terminate upon entry of judgment on the conviction and sentence; the System tendered notice to plaintiffs before the benefits were suspended and a hearing was held by the Board before the benefits were terminated. We agree with the System.

A. Section 18-163 of the Pension Code

It is well settled in Illinois that public employee pensions are a matter of contractual right. *Moore v. Board of Trustees of the Sanitary District Employees' & Trustees' Annuity & Benefit Fund*, 157 Ill.App.3d 158, 163, 510 N.E.2d 87, 91 (1987). However, the state legislature has the power to take action to deter felonious conduct in public employment by affecting the pension rights of public employees convicted of a work-related felony. *Moore*, 157 Ill.App.3d at 163, 510 N.E.2d at 91. Individual who have accepted public employment are deemed to have accepted the terms and conditions of pension rights prior to their employment. *Moore*, 157 Ill.App.3d at 163, 510 N.E.2d at 91.

Section 18-163 of the Pension Code illustrates these principles and provides as follows:

> "Felony conviction. None of the benefits herein provided shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his or her service as a judge.
>
> This section shall not operate to impair any contract or vested right acquired before July 9, 1955 under any law or laws continued in this Article, nor to preclude the right to a refund.
>
> All participants entering service subsequent to July 9, 1955 are deemed to have consented to the provisions of this Section as a condition of participation." 40 ILCS 5/18-163 (West 1994).

The underlying purpose of this felony forfeiture provision is to "discourage official malfeasance by denying the public servant convicted of unfaithfulness to his trust the

retirement benefits to which he otherwise would have been entitled." *Kerner v. State Employees' Retirement System*, 72 Ill.2d 507, 513 (1978).

The facts in the record show that Stillo was convicted in federal court on July 29, 1993, and sentenced to serve four years in prison on July 11, 1994. His appeal from the conviction and sentence was denied by the United States Court of Appeals for the Seventh Circuit on June 9, 1995. *United States v. Stillo*, 57 F.3d 553. The record also reflects that Stillo received a letter from the System on January 19, 1994. This letter informed Stillo that his conviction would serve to terminate his retirement benefits. Then, on July 26, 1994, he received another letter from the System. This time the System notified Stillo that a hearing concerning termination of his benefits was scheduled for August 26, 1994. The notice stated that the "focus of this hearing will determine the applicability and effect of Section 18-163 of the Retirement Act as it applies to felony convictions against you as set forth in the sentencing order dated July 11, 1994." Prior to the August 26 hearing, Stillo received his full pension benefits for July 1994, but the pension check for August 1994 was suspended pending the hearing and a final decision by the Board.

It is undisputed in this case that section 18-163 operates to terminate pension benefits for pension participants who are convicted of felonies arising out of acts committed during performance of official duties. 40 ILCS 5/18-163 (West 1994). Therefore, since it is clear that Stillo became a participant after July 9, 1955, the Pension Code terminated the plaintiffs' benefits as of the date his sentence was imposed, July 11, 1994. Accord-

ingly, we proceed to the issue of the notice required when such benefits are suspended and/or terminated.

B. Notice

Plaintiffs contend that the United States Supreme Court's decision in *Mathews* (*Mathews v. Eldridge*, 424 U.S. 319, 47 L.Ed.2d 18, 96 S. Ct. 893 (1976)) required the System to hold a hearing before suspending plaintiffs' benefits for the month of August of 1994. We reject this contention.

We recognize that it is firmly established in Illinois that administrative proceedings must conform to the constitutional requirements of due process of law. *Wendl v. Moline Police Pension Board*, 96 Ill.App.3d 482, 486, 421 N.E.2d 584, 587 (1981). While the essence of procedural due process is meaningful notice and meaningful opportunity to be heard (*Wendl*, 96 Ill.App.3d at 486, 421 N.E.2d at 587; *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 94 L.Ed. 865, 70 S.Ct. 652 (1950)), due process is a flexible concept and specific procedural requirements with respect to notice and opportunity to be heard vary, depending upon the character of the rights affected and the degree of the deprivation. *Wendl*, 96 Ill.App.3d at 486, 421 N.E.2d at 587. As a result, "some kind of hearing" is required before an owner is "finally" deprived of his or her property interest. *Wolff v. McDonnell*, 418 U.S. 539, 557-58, 41 L.Ed.2d 935, 952, 94 S.Ct. 2963, 2975 (1974). This reasoning was extended to benefits that are a matter of statutory entitlement in *Goldberg v. Kelly*, 397 U.S. 254, 261-64, 25 L.Ed.2d 287, 295-97, 90 S.Ct. 1011, 1016-19 (1970).

Identification of the "specific dictates" of due process requires consideration of three factors: (1) the private interest that will be affected by the government's action; (2) the risk of an erroneous deprivation of that interest through the procedures used and the probable value, if any, of additional procedures; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional procedural requirement would entail. *Mathews*, 424 U.S. at 335, 47 L.Ed.2d at 33, 96 S.Ct. at 903.

First, plaintiffs' interest was the full and uninterrupted receipt of pension benefits. The record reflects that plaintiffs' benefits were paid in full through July 1994 and were only suspended for the month of August 1994 pending the outcome of the August 26 Board hearing. Had the Board concluded after the hearing that benefits should not cease, the benefits would have been reinstated and paid in full, including August 1994. The suspension of benefits occurred only during the month in which the hearing was held and the Board ultimately decided to terminate plaintiffs' benefits. Thus, plaintiffs' interest in receiving benefits was only affected for August 1994, the month in which the Board hearing was held.

Second, the risk of erroneous deprivation is minimal under the Pension Code. Section 18-163 clearly provides that conviction of a felony relating to government service will result in the termination of pension benefits. 40 ILCS 5/18-163 (West 1994). This provision offers a fair and reliable means of administrating pension benefits. The procedures followed by the System in this case do not support a need for additional procedural safeguards. When the System wrote Stillo in January 1994 and in-

formed him that his benefits would be paid until the date of his sentencing and then cease, the System was operating under the assumption that sentencing would occur in March of 1994. However, Stillo's sentencing was moved to July 11, 1994, and the System continued payment of benefits through the end of July 1994. Then, on July 26, 1994, plaintiffs received notice of the Board's hearing scheduled to determine whether benefit payments would terminate. According to these facts and the procedures the System employed, we find that there was no risk of an erroneous deprivation of plaintiffs' benefits.

Finally, *Mathews* requires us to consider the interests of the public. This factor involves an examination of the relevant fiscal and administrative burdens, and also a determination as to when judicial procedures must be imposed upon administrative action to assure fairness. *Mathews*, 424 U.S. at 347, 47 L.Ed.2d at 40, 96 S.Ct. at 909. The overriding governmental and public interest in section 18-163 is protecting the fiscal integrity of the public pension system and discouraging illegal activities by public employees. See, *e.g.*, *Kerner*, 72 Ill.2d at 513. The System's decision to suspend payment of benefits after notice of a scheduled termination hearing was mailed, and only for the month in which the hearing was held, does not violate the public's interest or general notions of fairness.

Plaintiffs further argue that since the Illinois Appellate Court in *Wendl* held that police officers receiving disability pensions retained a property right in pension benefits that could not be terminated without meaningful notice (*Wendl*, 96 Ill.App.3d at 486-87, 421 N.E.2d at 587), and that in *Moore v. Board of Trustees*, 157 Ill.App.3d 158,

510 N.E.2d 87 (1987), the appellate court ruled that a Metropolitan Sanitary District employee convicted of a felony connected to his employment had annuity benefits terminated without a hearing, Stillo's pension and its attendant benefits could not be suspended without notice, an opportunity to be heard, or a hearing. Plaintiffs state that *Wendl* and *Moore* require us to find that any notice that the System offered would have only been effective as to dates after a hearing, not before.

We find that neither *Wendl* nor *Moore* requires us to reverse the Board's decision. In *Wendl*, the court ruled that the pension board gave inadequate notice of a hearing where the plaintiffs' disability benefits were terminated. *Wendl*, 96 Ill.App.3d at 488, 421 N.E.2d at 588. The notice at issue in *Wendl* failed to indicate, or even suggest, that the Board might possibly terminate the plaintiffs' benefits. *Wendl*, 96 Ill.App.3d at 488, 421 N.E. 2d at 588. In the instant case, however, the notice issued by the System on July 26, 1994, clearly stated that a hearing would be held August 26, 1994, to determine whether benefits would be terminated under section 18-163 of the Pension Code. As a result, plaintiffs had adequate notice as to the purpose of the hearing and, therefore, according to the *Wendl* court's reasoning, the notice was sufficient.

In *Moore*, the Board of Trustees of the Sanitary District Employees' and Trustees' Annuity and Benefit Fund notified the plaintiff (Moore) that his pension benefits had been terminated at a board meeting because of a felony conviction related to performance of his work duties. Moore never received advance notice of this termination. This court ruled that "[i]t is clear as a matter

of due process *** that the board erred in not providing Mr. Moore with notice and an opportunity to be heard before the termination of his benefits." *Moore*, 157 Ill. App.3d at 166, 510 N.E.2d at 93. The court continued by stating that "[i]t is, however, not necessary, as stated above, that the board conduct a full hearing concerning the underlying felony conviction itself." *Moore*, 157 Ill. App.3d at 166, 510 N.E.2d at 93.

Based on the record before us in the instant case, plaintiffs did receive notice prior to the hearing in which the Board would decide whether their benefits would terminate under the Pension Code. Prior to the hearing regarding termination of benefits, the System merely suspended plaintiffs' benefits for the month of August pending the outcome of the hearing. Unlike in *Moore*, plaintiffs' benefits were not suspended without a hearing, and the System sent notice of the hearing one month in advance. If plaintiffs had prevailed at the hearing, their full benefits would have resumed and they would have received the August payment in full. Thus, plaintiffs had an opportunity to contest the System's decision to terminate benefits on August 26, 1994, and still received benefits through the time when notice was tendered. Accordingly, we decline plaintiffs' invitation to follow *Wendl* and *Moore*.[1]

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[1] The Stillos' reply brief states that *Wendl* and *Moore* are essential to our analysis because "those decisions hold that pension benefits, being property rights, require the termination of those rights to be based upon cause and cannot be arbitrarily extinguished without a hearing," and "a hearing for termination of such pension benefits is required." As noted in

(continued...)

It is important to note the System does not deny that due process is a necessary component to the termination of pension benefits, but instead argues that *Kerner v. State Employees' Retirement System*, 53 Ill.App.3d 747, 368 N.E.2d 1118 (1977), *aff'd*, 72 Ill.2d 507 (1978), should guide our analysis on this issue. In *Kerner*, ex-Governor Otto Kerner joined the retirement system in 1965. Following his 1968 resignation as Governor to accept appointment as a federal judge, he received pension checks. Then, in April 1973, Kerner was convicted of felonies in federal court. Pursuant to section 14-199 of the Pension Code (Ill. Rev. Stat. 1975, ch. 108-1/2, par. 14-199), his monthly pension allowances were terminated by the retirement system because of his convictions, and he filed a demand for resumption of benefits in October 1975.[2] The Board denied Kerner's benefits in May 1976, the circuit court reversed the Board, and the appellate court reversed the circuit court and reinstated the Board's decision. *Kerner*, 53 Ill.App.3d at 755, 368 N.E.2d at 1123-24. Relevant to the instant case, both the appellate court and the supreme court rejected Kerner's claim that he had been denied due process under either the Illinois or United States Constitution by the retirement system's termination of benefits. However, neither case provided any analysis of the due process issue. Therefore, while *Kerner* presents a factually similar case and confirms the statutory authority to terminate benefits, we

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(...continued)
this opinion, the record shows that plaintiffs' benefits were not terminated until *after* the August 26, 1994, hearing.

[2] This statutory provisions is almost identical to section 18-163.

rely on traditional due process analysis to clarify the standard for due process in pension benefit termination cases.

As noted above, the *Mathews* test for due process does not require that we find the System violated plaintiffs' due process rights. After Stillo's conviction in the district court, the System continued to pay his full retirement benefits. It was only after the district court pronounced Stillo's sentence on July 11, 1994, that the System notified him that it would conduct proceedings devoted to determining whether his benefits would terminate. But before actually terminating the benefits, the System notified Stillo that a termination hearing was scheduled for August 26, 1994, and only the benefit payments for August of 1994 were suspended pending the Board's decision after the hearing. Therefore, we hold that the System may, pursuant to enforcement of section 18-163, suspend benefits pending a hearing on the issue, as long as notice is provided and a hearing is conducted by the Board before finally terminating retirement benefits. This rule does not violate established due process rights and allows for efficient enforcement of the policies set forth in the Pension Code.

C. Exhaustion of Appeals

Next, plaintiffs contend that the System should have been prohibited from extinguishing pension benefits until completion of all appeals from Stillo's criminal conviction. We disagree.

As used in the Pension Code, the phrase "convicted of a felony" has been interpreted to mean the date upon

which a court enters judgment and imposes a sentence on the conviction. *Allen*, 71 Ill.2d at 381; *People ex rel. Wright v. Board of Trustees of the Teachers' Retirement System*, 157 Ill.App.3d 573, 579, 510 N.E.2d 1283, 1287 (1987).

In *People ex rel. Keenan v. McGuane*, 13 Ill.2d 520, 523-24 (1958), the Illinois Supreme Court addressed the issue of whether an appeal of a criminal conviction stayed a provision in the Election Code (Ill. Rev. Stat. 1957, ch. 38, par. 587) that stated "[e]very elected office shall become vacant on the happening of *** [h]is conviction of an infamous crime." The court found that the office of Cook County assessor became vacant after the then-assessor's conviction and sentencing on charges of federal tax evasion. *Keenan*, 13 Ill.2d at 525. The assessor then argued that the pendency of his appeal before the United States Court of Appeals for the Seventh Circuit stayed the finality of his conviction. The supreme court rejected this argument, finding that after a conviction, "the presumption of innocence which, up to that time, had persisted in favor of the defendant, no longer prevails, and that the law thereafter presumes that the proceedings have been regular and that the defendant is guilty." *Keenan*, 13 Ill.2d at 536. In fact, the court stated that it found "no merit in petitioner's contention that pendency of his appeal stays the finality of his conviction." *Keenan*, 13 Ill.2d at 537.

Plaintiffs rely on Supreme Court Rule 761(d)(2) in support of their argument that their benefits should not have been extinguished while Stillo appealed his criminal conviction. 134 Ill.2d R. 761(d)(2). We find that this reliance is misplaced.

Supreme Court Rule 761(d)(2) provides, in part, that when an attorney has been convicted of a crime involving fraud or moral turpitude, a hearing shall be conducted before the hearing board of the ARDC; however, if the attorney has appealed the conviction, the hearing shall be delayed until completion of the appellate process, unless the attorney requests otherwise. 134 Ill.2d R. 761(d)(2). This rule provides that, if an attorney is convicted of a crime involving fraud or moral turpitude, the administrator of the ARDC shall file a petition with the Illinois Supreme Court alleging relevant facts and requesting that the attorney be suspended from the practice of law. See 134 Ill.2d R. 761(b). After considering the petition, the supreme court may order a suspension.

Since Rule 761 stays a final ARDC hearing during the appeals process, and plaintiffs' benefits were terminated prior to completion of Stillo's appeal from his criminal conviction, we must decide whether we want to extend application of the procedures employed in ARDC's disciplinary actions to administrative actions involving public employee retirement benefits. We find that the language of section 18-163 does not support expanding the coverage of the reasoning used in Rule 761.

Section 18-163 stated in certain terms that any person convicted of any felony related to his service as a judge will lose his pension benefits. 40 ILCS 5/18-163 (West 1996). If we were to apply the procedures set forth in Rule 761, we would nullify the plain language of section 18-163 and call into question the supreme court's well-reasoned decision in *Keenan*. Such drastic action is not warranted. Therefore, we should leave Rule 761 to ARDC's disciplinary matters and follow the clear dictates

of the Pension Code. Accordingly, under the Pension Code, the System may proceed to terminate benefits in accordance with due process once the participant has been convicted of a felony and sentenced.[3]

CONCLUSION

For the aforementioned reasons, we affirm the decision of the circuit court.

Affirmed.

Zwick and Quinn, JJ., concur.

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[3] The Stillos cite *Levine v. Kling*, 123 F.3d 580 (7th Cir. 1990), for the proposition that the System could not proceed with benefit termination procedures until Stillo exhausted his appeals. *Levine* specifically dealt with a person convicted of using interstate commerce to commit murder and his efforts to bring a legal malpractice action against his appellate defense attorney. The seventh circuit held that under Illinois law the client, who had not made a successful collateral attack on his conviction, could not maintain an action for legal malpractice against appellate defense counsel. However, the court made clear that if the client succeeded in getting his conviction overturned, he could bring a new malpractice suit. *Levine*, 123 F.3d at 583. Therefore, *Levine* only supports a conclusion that had Stillo had his conviction reversed by the court of appeals, he could have had his benefits restored. *Levine* stands for nothing more.

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

Adam and Florence Stillo, Plaintiffs,	)	
v.	)	No. 94 CH 9756
State Retirement System, Defendant.	)	

ORDER

This matter coming to be heard on plaintiffs' complaint for administrative review, all briefs being filed, the attorneys being present and the Court being fully advised on the premises:

IT IS HEREBY ORDERED THAT:

Plaintiffs' petition for administrative review is denied.

Atty No. 99000
Name Iain Johnston
Attorney for Defendant
Address 100 W. Randolph St.
City/Zip Chicago IL 60601
Telephone (312) 814-3654

November 24, 1997

ENTER:

/s/ John K. Madden
Judge Judge's No.

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT - SIXTH DIVISION

ADAM N. STILLO and FLORENCE F. STILLO,	)	
Plaintiffs-Appellants,	)	
v.	)	No. 1-97-4630
STATE RETIREMENT SYSTEMS, JUDGES' RETIREMENT SYSTEM OF ILLINOIS,	)	
Defendant-Appellee.	)	

ORDER

This cause coming to be heard on the Petition for Rehearing filed by Plaintiffs-Appellants on June 11, 1999, and pursuant with Supreme Court Rule 367;

IT IS HEREBY ORDERED that the Petition for Rehearing is DENIED.

ORDER ENTERED
July 19, 1999
Appellate Court,
First District

/s/ Robert Chapman Buckley
Justice

/s/ Morton Zwick
Justice

/s/ Patrick J. Quinn
Justice

88117

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

December 1, 1999

Mr. Stanley H. Jakala
Attorney at Law
3219 S. Maple Ave.
Berwyn, IL 60402

No. 88117 – Adam N. Stillo et al., petitioners, v. State Retirement Systems, etc., respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 23, 1999.